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November 23, 1998

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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NOV 23 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket 98-184

Dear Ms. Salas:

Enclosed for filing in the above captioned matter, please find an original and twelve (12) copies of **GST Telecom Inc.'s Comments In Opposition to the Transfer of Control**.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. If you have any questions regarding this filing please contact me at 202/424-7791.

Sincerely,



Robert V. Zener

RVZ/ta
enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Transferor,)	CC Docket No. 98-184
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and)	
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BELL ATLANTIC CORPORATION,)	
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Transferee,)	
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For Consent to Transfer of Control)	

GST Telecom Inc.'s Comments in Opposition
to the Transfer of Control

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November 23, 1998

**Before the
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Washington, DC 20554**

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GST Telecom Inc.'s Comments in Opposition
to the Transfer of Control

On October 2, 1998, GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") filed joint applications (collectively "Joint Applicants") under Sections 214 and 310(d) of the Communications Act requesting Federal Communications Commission ("FCC") approval of the transfer of control to Bell Atlantic licenses and authorizations controlled or requested by GTE or its affiliates and subsidiaries. The FCC issued a Public Notice¹ seeking comments and establishing November 23, 1998 as the deadline for filing comments or petitions

¹ *GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed By GTE and Bell Atlantic*, CC Docket No. 98-184, DA 98-2035, Public Notice (Rel. Oct. 8, 1998).

to deny. In response to that Public Notice and pursuant to Section 1.51(c) of the FCC's rules, GST Telecom Inc. ("GST") requests that the FCC reject the joint applications for transfer of control because the proposed merger will not be in the public interest.

I. GST's Interest In The Proceeding

GST has certificates of public convenience and necessity to provide telephone exchange and exchange access service in: Arizona, California, Hawaii, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and the Commonwealth of the Northern Mariana Islands. As a facilities-based integrated communications provider,² GST operates state-of-the-art, digital telecommunications networks that and competes for customers with GTE in many markets.

GST currently provides telephone exchange and exchange access in forty-one markets and competes against GTE's incumbent local exchange carrier ("ILEC") operations in several of those markets. GST has entered into four interconnection agreements with GTE pursuant to § 251(c) of the Telecommunications Act. GST also competes with GTE for intrastate and interstate interexchange service³ in the markets in which GTE also is the ILEC. In addition, GST constructs, markets, and manages long-haul fiber optic facilities in Arizona, California, and Hawaii, states where GTE currently is an ILEC. GST's total long-haul fiber optic facilities

² GST offers a full line of integrated telecommunications products and services, including exchange service, exchange access service, interexchange service, special access services, and Internet and other data transmission services. Therefore, GST considers the term "competitive local exchange carrier" to be a misnomer and believes that ICP provides a more apt description of its business.

³ GST also is authorized to provide interexchange service in 46 states and the District of Columbia.

extend over 1,300 miles and another 1,800 route miles are under construction to become operational within the year.

Despite the breadth of this network, GST remains a small, entrepreneurial telecommunications company and is considered a small business by the federal government.⁴ GST, as of June 30, 1998, had 1,367 employees, about 100,000 installed access lines, and 1997 gross revenue of approximately \$120 million.

In contrast, GTE and Bell Atlantic are anything but small businesses. GTE alone had \$23.26 billion in revenue and controlled 21.5 million access lines. Combine those figures with the \$30 billion in revenue from the 38 million access lines of Bell Atlantic and the merged enterprise would be even more of a communications behemoth than the companies are separately. Their combined **daily net income** represents approximately 10% of GST's projected **gross annual revenue** for 1998.⁵ The combination of these two giants could, if history is any indication, erect substantial barriers to competition.

Given the parallel markets in which GST and GTE operate, GST believes that its experience in obtaining interconnection is extremely relevant to the FCC's consideration of the joint applications. GST asserts that its history, along with that of other competitors to GTE and Bell Atlantic, provides strong and material evidence that the merger will not promote competition and is not in the public interest. GST therefore requests that the FCC reject the joint

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15,499,16,150-52 (1996) ("Local Competition Order").

⁵ *Compare Preliminary Statistics of Communications Common Carriers*, Table 1.1 (1997 ed.) with <<http://www.gstcorp.com/press/gen122.html>>.

applications or, in lieu thereof, imposing substantial market opening conditions on GTE that are enforceable by the FCC and competitors.

II. The Standards For Considering The Merger

The transfer of control of authorizations and licenses requires that the FCC find the transfers to serve the public interest.⁶ In doing so, the FCC must weigh the potential public interest harms, generally the anticompetitive effect of such mergers,⁷ and balance that against the potential public interest benefits of the merger.⁸ In all such cases, the burden of proof rests with the applicants to demonstrate, that on the whole, the merger will be in the public interest.⁹

GST expects that many parties filing petitions to deny or comments in opposition will address the numerous economic issues related to the anticompetitive effects of the proposed merger. GST will focus its analysis on the broader issue – whether the merger is in the public interest. The Joint Applicants have not met their burden of proof.

⁶ E.g., *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp., Transferor to SBC Communications, Inc., Transferee*, CC Docket No. 98-25, FCC 98-276, Memorandum Opinion and Order, slip op. at ¶ 13 (Rel. Oct. 23, 1998) (“SNET Merger Order”); *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, FCC 98-225, Memorandum Opinion and Order, slip op. at ¶ 9 (Rel. Sept. 14, 1998) (“MCI Merger Order”).

⁷ E.g., *FCC v. RCA Communications, Inc.* 346 U.S. 86, 93-95 (1953); *Application of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19,985, 20,008 (1997) (“NYNEX Merger Order”).

⁸ *SNET Merger Order* at ¶ 13; *MCI Merger Order* at ¶ 9.

⁹ *Id.*

III. The Proposed Merger Does Not Serve The Public Interest

GTE and Bell Atlantic proffer several reasons that the merger will be in the public interest with the primary rationale that it will open up the market for local telephone service. The Joint Applicants state that “this merger will enable the combined company to attack the local markets of other Bell companies on a widespread and effective bases.”¹⁰ They go on to note that the merger “creates real-world conditions necessary to succeed in such out-of-franchise entry that GTE has already demonstrated an interest in pursuing....”¹¹ However, an examination of GTE’s historical record¹² does not support the Joint Applicants’ claims of interest in opening local markets.

A. GTE Has Shown No Interest In Expanding Into US WEST Territory

Consider the following example of GTE’s behavior in Oregon. US WEST is the ILEC for downtown Portland, OR. Just a few miles to the south and west lies Beaverton, OR, international headquarters for Nike and within GTE’s Oregon service territory. Despite chronic complaints about US WEST quality of service,¹³ and GTE’s decision to reach an interconnection agreement with US WEST and obtain a certificate from the Oregon PUC as a competitive

¹⁰ *Application for Transfer of Control* 6 (Filed Oct. 2, 1998).

¹¹ *Id.* at Exhibit A, Public Interest Statement 6.

¹² *Cf.* Thucydides, *The History of the Peloponnesian War*, Book 1, Ch.1 (“those inquirers who desire an exact knowledge of the past as an aid to the interpretation of the future...”) (tr. R. Cawley 1876). Thucydides’ insight into the importance of history applies with equal force to the consideration of this merger.

¹³ *Investigation into the Service Quality of US WEST Communications, Inc., Pursuant to ORS 756.515*, UM 867, Order No. 97-411, slip op. at 1 (Adopted Oct. 27, 1997) (US WEST service quality problems existed since 1990).

carrier,¹⁴ GTE does not generally provide competitive service in Portland, OR. Thus, while the Joint Applicants talk the talk, one merger, GTE, certainly does not walk the walk. GST believes the FCC should assess the situation on the facts rather than unsupported assertions set forth in the Joint Application.

GTE has not demonstrated any interest in penetrating US WEST's Portland market.¹⁵ If GTE shows no interest in attacking an incumbent that has been severely criticized for providing relatively poor service, what basis is there to believe that the Joint Applicants' assertions that the merged entity will be emboldened to attack other incumbents after the merger.

B. GTE Has Imposed Substantial Barriers To Competitors In Its ILEC Markets

Attached to this petition is the declaration of Brian D. Thomas, Vice President for Inter-Company Relations at GST. That declaration explains in detail some of the barriers that GTE has erected to competitive entry in the local markets in which it is the ILEC. Continual problems with operation support systems ("OSS"), GTE's multi-location national ordering process, switch translations, trunking, and unbundled loops all point to a corporate infrastructure with a substantial antipathy to competition. While the declaration points to some recent improvement in resolving interconnection-related issues (coinciding with the prosecution of the merger application before the states and the FCC), GST is concerned that once the merger is

¹⁴ *Application of GTE Communications Corp. for a Certificate of Authority to Provide Telecommunications Services in Oregon and Classification as a Competitive Provider*, CP 318, Order (Adopted Dec. 19, 1997).

¹⁵ GST suspects that the pattern evidence in Oregon repeats itself in other GTE service territories.

approved and its noncompliance with its statutory, regulatory, and contractual obligations are no longer an issue, GTE will revert to its pre-merger application ways of doing business.¹⁶

C. The Proposed Merger Will Not Be In The Public Interest

Pursuant to federal policies and incorporated in GST-GTE interconnection agreements, GTE is obligated to provide services to GST in a nondiscriminatory fashion such that the level of services and support provided by GTE is the same as that provided to itself or its affiliates.¹⁷ This nondiscriminatory access includes the ability of competing carriers to “perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially *the same time and manner* that an incumbent can for itself....”¹⁸

¹⁶ For example, the combined companies might eliminate the newly established electronic submission of local service request orders and the escalation teams installed at the Fort Wayne facility to resolve problems.

¹⁷ *Local Competition Order*, 11 FCC Rcd at 15,763. In that Order, the FCC noted the importance of access to OSS:

Much of the information maintained by these systems is critical to the ability of other carriers to compete with the incumbent LECs using unbundled network elements or resold services. Without access to review, inter alia, available telephone numbers, service interval information, and maintenance histories, competing carriers would operate at a significant disadvantage with respect to the incumbent. Other information, such as facilities and services assigned to a particular customer, is necessary to a competing carrier’s ability to provision and offer competing services to incumbent LEC customers.

Id.

¹⁸ *Id.*

Mr. Thomas's declaration reveals several circumstances in which it is highly improbable that GTE afforded OSS access to GST in substantially the same time and manner as it provided to itself or subsidiaries. For example, it is highly doubtful that GTE personnel are prohibited (like the personnel in different National Open Market Centers) from talking to each other to resolve a customer's problem. Mr. Thomas' declaration also describes a specific example of how GTE's ordering and provisioning procedures for CLECs operate in practice to slow down the process and create the impression in the minds of prospective customers that GST is unable to promptly meet its promises to provide service. Decl. at ¶¶ 37-45. Therefore, GST is forced to conclude that the GTE has failed to satisfy this important FCC regulatory requirement implementing the Telecommunications Act of 1996.

The failure to comply with statutory or regulatory requirements clearly is one basis upon which the FCC determines whether the grant of an application is in the public interest.¹⁹ Given the failure to comply with the FCC's implementation of the Telecommunications Act of 1996, sufficient ground exists to decide that the merger is not in the public interest and the joint applications should be rejected.

¹⁹ See, e.g., *GTE Serv. Corp. v. FCC*, 782 F.2d 263, 272-73 (D.C. Cir. 1986); *Pinelands, Inc.*, 7 FCC Rcd 6058, 6063 (1992) (citing *Spanish Int'l Communications Corp.*, 2 FCC Rcd 3336, 3342 n.15 (1987); *Western Telecommunications, Inc.*, 3 FCC Rcd 6405, 6406 (1988).

**D. The FCC Should Impose Stringent Market Opening Conditions On
The Merger If It Approves The Transfer Of Control**

The FCC has the power to impose conditions on the transfer of section 214 authorizations to ensure that the transferee will operate in the public interest.²⁰ Given GTE's history of obstructing interconnection at every twist and turn, the FCC, at a minimum, should impose on the GTE Operating Companies the same conditions that applied to Bell Atlantic after its merger with NYNEX.²¹ The FCC found that those conditions "will make it more likely that other market participants can enter, expand, or become more significant market participants...."²² Compliance with these conditions would alleviate, to some extent, the problems that GST has faced in obtaining interconnection with GTE.

In addition to the *NYNEX Merger Order* conditions, the FCC may wish to consider applying the requirements imposed on Southwestern Bell Telephone by the Texas Public Utility Commission as a precondition for state approval of in-region interLATA service. GST recognizes that § 271 does not apply to GTE. Essentially, § 271 establishes a quid-pro-quo between the BOCs and the FCC; if they open their markets sufficiently the FCC will let them provide in-region interLATA service.²³ Adoption of the Texas conditions on GTE Operating Companies would establish a similar quid-pro-quo; GTE agrees to take extraordinary steps in

²⁰ See, e.g., *GTE Serv. Corp.*, 782 F.2d at 268; *NYNEX Merger Order*, 12 FCC Rcd at 20,002; *In the Matter of FTC Communications, Inc.*, 4 FCC Rcd 1396, 1397 (1989).

²¹ *NYNEX Merger Order* at Appendices C & D.

²² *Id.* at 19,994.

²³ *SBC Communications, Inc. v. FCC*, No. 98-10140, slip op. at 4 (5th Cir. Sept. 23, 1998).

opening its market in return for the FCC's approval of an equally extraordinary action -- grant of the merger application. An added benefit will be that these stringent market conditions would become federal law subject to enforcement at the FCC through its accelerated docket procedure or in federal district court pursuant to § 401(a) of the Communications Act.

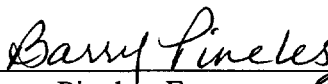

IV. Conclusion

GST sees no reason to believe that the merger will reduce GTE's callous disregard for its statutory, regulatory and contractual obligations. In fact, approval of the merger will send the wrong signal to GTE. It can continue to ignore its responsibilities under § 251 of the Telecommunications Act and the FCC will reward it with the approval of a merger. Instead, the FCC should send a clear signal that failure to comply with statutory and regulatory obligations will result in immediate adverse consequences. The single action of disapproving the merger because one party has not complied with its market-opening obligations will force GTE to recognize that talk is cheap and action is needed to ensure that it will receive favorable regulatory treatment.

Respectfully submitted,

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For Consent to Transfer of Control)	

Declaration of Brian D. Thomas
On Behalf of GST Telecom Inc.
in Support of the Comments in Opposition
to the Transfer of Control

I, BRIAN D. THOMAS, being of lawful age, hereby declare:

1. My name is Brian D. Thomas. I am Vice President for Inter-Company Relations for GST Telecom Inc. ("GST"). My business address is 4001 Main Street, Vancouver, WA 98663. My telephone number is (360) 604-2833.
2. I have more than seventeen years experience in the telecommunications industry. For the first five years I worked in the telecommunications consulting practice of Ernst & Whinney (now known as Ernst & Young). In 1985, I joined Pacific Telecom, Inc., and held various positions through 1995, including Assistant Vice President - Government Affairs. In that position I managed Pacific Telecom's federal relations office in Washington, D.C. In 1995, I joined

Electric Lightwave, Inc. ("ELI") a competitive local exchange carrier in the western United States. There, for approximately two years, I served as Director - Public Affairs with primary responsibility for matters pertaining to competitive entry and interconnection.

3. In May of this year, I joined GST as Vice President, Inter-Company Relations. In that capacity I am involved in and responsible for a wide range of matters including, but not limited to, management of interconnection agreements pursuant to the Telecommunications Act of 1996 (the "Act"), service escalations, network problems and service outages, and other inter-company issues pertaining to incumbent LEC obligations under the Act.

4. The purpose of my testimony is to describe some of the problems that GST has experienced in attempting to compete with GTE as a result of its failure to comply with its statutory and contractual interconnection obligations. In particular, my testimony focuses on the inadequacy of GTE's operation support systems ("OSS"), its inability to test properly and load NXXs in preparation for new trunking cutovers to GST, and unilateral modifications to local interconnection trunking architecture. My testimony indicates a clear pattern of antipathy and resistance to opening its local exchange markets to competition, particularly in the states of California and Hawaii.

Insufficient Access to Operational Support Systems

5. GTE operates three National Open Market Centers ("NOMCs") (more may exist but I am not personally aware of them) which are responsible for processing competitive local exchange carrier ("CLEC") resale, unbundled network element and telephone number portability orders placed with GTE's various incumbent local exchange carrier ("ILEC") operating entities throughout the country. NOMCs are supposed to be the CLEC's single point of contact with GTE for pre-ordering, ordering and billing issues.

6. GST routinely experiences severe problems with GTE's NOMCs when placing or inquiring about pending interim number portability ("INP"), unbundled element, or resale orders -- functions that are critical to the provision of competitive local exchange services in GTE's service territories.

7. GST currently submits local service request ("LSRs") orders via telefacsimile to GTE's NOMC in San Angelo, TX. It is my understanding that GTE requires that all LSRs, whether for local number portability, resale, or obtaining unbundled loops, must be submitted to the San Angelo NOMC that then keys in the order to GTE's internal order processing system. From there, the order is then forwarded to the NOMC in Fort Wayne, Indiana. That NOMC prepares appropriate internal work orders and scheduling arrangements for action by GTE's field personnel. For routine resale, interim number portability or unbundled loop orders, the time between the date the actual order is sent (via fax) to San Angelo to the cutover date, is supposed to be no more than seven to ten business days. Unfortunately, too often, it takes much longer particularly as a result of the impediments or inefficiencies described below.

8. Account representatives with the individual GTE operating companies have told GST that GST is not permitted to contact the San Angelo NOMC regarding the status of particular orders, despite the fact that the San Angelo NOMC is the location where all orders are first submitted. Upon placing an order, GST receives no information from the San Angelo NOMC regarding the receipt of the order. As a result, the only evidence GST may rely on to ensure receipt of the order are the fax machine transmission reports; GST-generated evidence that LSRs are ever received in San Angelo. GST also has been told that only certain personnel at the Fort Wayne NOMC are permitted to contact the San Angelo NOMC. Thus, a "Catch-22" situation exists for GST: it is not allowed to contact the NOMC that can resolve a problem (San Angelo) and the

NOMC that it can contact apparently does not have unlimited authority to address a problem, directly or indirectly.

9. Given these restrictions, GST's ability to resolve problems concerning particular loop, resale or porting orders is quite limited. GST must contact the Fort Wayne NOMC. Initial contacts there are typically with inexperienced individuals who serve as a customer service representative for competitive local exchange carriers. Quite often, this person is of little help in resolving problems and can do no more than simply report order status or the existence of any errors. GTE does not permit these individuals to assist GST in correcting errors or modifying orders. In some instances, GST has to explain to GTE's representatives the Company's own procedures for initiating or processing interim number portability orders.

10. Usually, if GST does not receive satisfaction from the initial contact person, it escalates the problem to a supervisor. Failure to resolve the problem results in further escalation; either to GST's account representative with the local operating company (who will contact a senior administrator at the Fort Wayne NOMC) or directly to a senior administrator at the Fort Wayne NOMC. GST usually makes direct contact because the account representative turnaround time is quite slow. The senior administrator is the first person GST can contact that has the authority to communicate with the San Angelo NOMC in order to correct a problem. Moving up this hierarchy can take several hours, or even longer, merely to obtain order status or confirmation. A problem that is still unresolved is then escalated to the Manager of the entire Fort Wayne NOMC and then, if necessary, to the manager of all GTE's NOMCs.

11. If the order contains an error that was the fault of GTE (i.e., the error was inputted incorrectly) GST is permitted to fax its version (the correct one) directly to the Fort Wayne NOMC. They will then add a supplement to the existing LSR order.

12. GTE's approach to taking CLEC orders is arcane and virtually guarantees that problems will arise. When they do, resolution generally is neither convenient nor timely. Simply stated, GST often encounters or is subjected to a considerable number of GTE-caused administrative errors with GTE's legacy ordering systems.

13. Resolving these mistakes or delays in processing orders increases GST's costs and impairs its ability to compete with GTE. More important, the situation hampers GST's ability to provide effective customer service because GST personnel are unable effectively to communicate with new customers regarding important elements of their forthcoming service. Absent this critical information, and GST's relations with its own customers are harmed to the possible benefit of its primary competitor -- GTE.

14. Within the past month, GTE has begun the implementation of an on-line ordering system in which orders are submitted electronically to GTE. Thus, some progress toward a more robust OSS is being made. However, it appears that, even with this new "on-line" approach, orders will continue to be entered manually in the Fort Wayne NOMC. While inputting errors may no longer occur in the San Angelo NOMC, all the other problems associated with the Fort Wayne NOMC already discussed still may occur. In any event, not all types of orders may be submitted using the new on-line system that means GST continues to rely on manual processing of orders, particularly for INP.

15. Accordingly, it is reasonable to expect that ordering problems will continue to occur until or unless GTE has the incentive to provide access to OSS consistent with or on par with the capabilities the Regional Bell Operating Companies -- functions that its merger partner, Bell Atlantic, is required to provide pursuant to section 271 of the Telecommunications Act

**Loading and Maintenance of Competitive LEC NXXs for Proper
and Efficient Call Routing**

16. An important but oft-neglected requirement for implementation of competitive local exchange services is the proper loading and testing procedures for new entrant NXXs in ILEC switches. GST routinely experiences problems with GTE when attempting to implement new or additional NXXs in a particular market or when turning up direct end office trunking for which proper switch translations are necessary.
17. In order to exchange local and intraLATA toll traffic GST and GTE must establish proper and reasonable trunking arrangements sufficient to satisfy the current and forecasted calling demand in both directions. In doing so, it is important that each company work cooperatively and proactively promptly to resolve problems or issues of concern raised by the other party, particularly when customers' calls are not being routed or completed correctly due to incorrect switch translations.
18. Switch translation problems can be divided into two areas. The first is a complete failure by GTE to recognize, accept, and implement a new NXX associated with a particular rate center. The second problem is a partial or incomplete implementation of a new NXX in all GTE switches within a particular geographic area. The end-result is substantial delays in commencing cut-overs from GTE to GST.
19. During a network planning meeting July 14, 1998, at GTE's regional headquarters in Everett, WA, GST and GTE representatives discussed problems related to incomplete switch translations performed by GTE technicians while implementing new local end office trunking arrangements between the companies. Such problems were becoming increasingly severe and acute in GTE service areas in California and, to a lesser extent in Hawaii, resulting in substantial traffic blocking and overflows of local traffic between the companies.
20. At the meeting and in subsequent correspondence, GST expressed severe concern about the slow response and low level of importance exhibited by GTE's representatives while

discussing the California switch translation problems. Certain GTE representatives clearly believed the problems were a facilities-ordering issue, and an error on GST's part, rather than a failure by GTE to comply with its traffic routing obligations in the interconnection agreement.

The agreement specifically states that:

GTE will deliver traffic destined for GST in accordance with the end office serving arrangements in the Local Exchange Routing Guide.

Telecommunication Facility Interconnection Agreement Between GST Pacific Lightwave, Inc. and GST California Inc. and GTE California Inc., Part V, § 5.01(E) ("GST Interconnection Agreement").

21. As an accommodation to GTE, GST agreed to use the GTE Access Service Request ("ASR") ordering process to implement new or additional local interconnection trunks. In doing so, GST never agreed that the ASR ordering process substituted or replaced the terms of the interconnection agreement relating to proper call routing and switch translation responsibilities. Thus, for GTE's convenience only, GST agreed to utilize GTE's ASR procedures to establish new or additional trunks as may be required to handle traffic exchanged between the companies. The use of such procedures does not constitute the ordering of a finished telecommunications service from GTE. Rather, as stated above, it reflects an accommodation on GST's part to utilize an existing method for establishing interoffice connectivity for the mutual benefit of each Company's end users.

22. The problem is GTE basically ignored the plain language of the contract, requiring call routing in accordance with the LERG. GTE took the position that since some of the ASR information was missing, GTE had no responsibility to obtain proper call routing information from the LERG. No other ILEC that GST interconnects with requires call routing information on ASRs or ignores their responsibility to utilize the LERG for proper call routing.

23. Simply stated, the manner in which the switch translation issue was addressed by GTE's representatives during and subsequent to the meeting indicated that GTE did and does not view interoffice connectivity on a bilateral basis. GTE's representatives took the unilateral position that GST failed to follow GTE's specific procedures for ordering new facilities that absolved GTE of responsibility for the switch translation problem despite the contractual condition requiring GTE to route traffic in accordance with the LERG.

24. In brief, GTE's position was "order according to our procedures or we are not responsible for what happens" and "our procedures take precedence over the terms of the agreement we have with you." "Your assumption that we check the LERG on each order is not valid, we do not."

25. At last count, the GTE NXX translation problem resulted in at least 125 reported instances of trouble and specific requests to GTE to investigate and fix reported routing problems. To my knowledge, despite GST's request to GTE to conduct a comprehensive review of all switches in Southern California to ensure proper switch translations, no comprehensive review has been conducted. It appears that GTE simply investigates each reported instance and is fixing them on a case-by-case basis. Again this case-by-case approach indicates no compelling desire or intent to address competitive or service affecting issues on a pro-active or time sensitive basis. Problems with switch translations continue even as of the date of my affidavit. As a result of this problem, GST had been forced to provide substantial monetary credits to a variety of customers because of the service degradation resulting from GTE's half-hearted approach to resolving the problem.

26. While the translation problem has lessened somewhat over the last few months (coinciding with the announced merger between GTE and Bell Atlantic), the problem remains in GST switches in Riverside and Los Angeles, CA affecting some sixty end offices and even GTE tandems. Additionally, a number of customers have been improperly billed intraLATA long

distance charges for calls that should have been rated as local calls had GTE properly loaded all of GST's NXXs. In short, the failure to correct the translation problem creates substantial difficulties for providing adequate telephone service in southern California.

27. In fact, as of the date of this affidavit, the switch translation problem recurred in California for a number of new end office trunk orders even though GST accommodated GTE by changing the ordering process. Recurrence of the problem indicates an endemic problem for which no reasonable or pro-active solution has been found. The continued recurrence of the switch translation problem demonstrates GTE's failure efficaciously to resolve problems as mandated by Part XVI of the *GST Interconnection Agreement* that requires that "trouble reports are resolved in a timely and appropriate manner."

28. Nor can GTE contend that GST has not followed-up on the resolution of the switch translation problem. Given the nature of the problems GST encountered and the length of time it took for GTE to respond, GST requested written notification of the preventive steps GTE has taken, or intends to take, to prevent a recurrence of the problem. To date, no formal response has been received.

Two-way versus One-way Trunking

29. GST's current interconnection agreements with GTE in the states of California, Hawaii, and Oregon contain terms and conditions for the provision of local interconnection trunk groups in order to exchange local and intraLATA toll traffic. Other traffic types such as interLATA toll, joint provision of Feature Group D, Operator Services and Directory Assistance are provisioned on trunk groups separate from those used for local and intraLATA toll. Each agreement specifically states that the local/intraLATA toll trunks are to be provisioned by either party on a two-way basis rather than a one-way basis; that is, calls may be completed in either direction on the trunks.

30. Use of two-way trunks is the most efficient means to handle local traffic to be exchanged between the companies. Two-way trunks mean either party may send traffic on any idle circuit that reduces the total number of trunks and corresponding facilities to be deployed by either party. In contrast, one-way trunking is less efficient because only the originating party may use a one-way trunk and no sharing occurs. The effect is a requirement to increase the number of trunks necessary to current and forecasted traffic levels between the parties.

31. Recently, GST informed GTE of its desire or intention to convert to reciprocal compensation. As a result, GTE unilaterally, and in direct contradiction of the terms of existing interconnection agreements, decided that all local interconnection trunks should be converted to one-way trunking. GTE did so without reasonable notice and despite no provision in the interconnection agreements allowing it to make a unilateral revision of this nature.

32. The basis for GTE's decision was a technical limitation inherent in one of the end office switching platforms deployed by the company in a large number of locations. The technical limitation, GTE claimed, prevented it from properly measuring terminating traffic and "may" affect routing of some traffic between carriers.

33. While there may, in fact, be a technical limitation in the switching platform, the manner in which GTE handled the matter was highly inappropriate given the existence of contractual obligations to GST. Because GST was moving toward implementation of the reciprocal compensation terms of the existing interconnection agreements, GTE apparently has decided that to stop processing existing and future local interconnection trunking orders on a two-way basis. At the time, GST had a number of orders pending, particularly in Southern California and Hawaii, which had been placed significantly to expand its presence and process in light of firm sales, customer orders, and scheduled customer turn-ups. The orders were issued on a two-way basis consistent with past practice and the terms of the interconnection agreements. In light of its

policy change, GTE stopped working or processing the orders and required, orally, that they be revised and resubmitted on a one-way basis. Essentially, work on the orders was suspended unless or until GST complied with GTE's new, unilaterally imposed, condition.

34. GST opposed GTE's position citing the specific terms of the existing interconnection agreements and the aforementioned inefficiencies associated with one-way trunking. GTE acknowledged GST's stated concerns but continuously cited the need to ensure proper measurement of traffic in light of GST's and other CLECs desire to convert to reciprocal compensation. Rather than negotiate the issue before refusing or rejecting orders, GTE simply stopped working on local interconnection trunk orders unless they were modified as one-way orders.

35. The direct effect on GST of GTE's unilateral decision was significant and immediate. In California and Hawaii, GST was forced to delay a number of large customer installations and turn-ups because the existing inter-company trunking network would not have been able to support the additional calling demand until or unless the pending orders were completed. In Hawaii, GST was also forced to delay a network grooming project designed to reduce GST's recurring network costs.

36. Only recently, and approximately four months after this issue first arose, upon GST's written agreement to consider one-way trunking at some point in the future did GTE agree to resume processing pending trunking orders on a two-way basis.

Unbundled Loop Ordering Problems

37. GST routinely orders unbundled loops from GTE. GTE has not been able expeditiously and efficiently to process orders for unbundled loops thereby delaying GST's ability to provide service to its customers and win new customers. A recent example will illustrate the problem.

38. On September 1, 1998, GST submitted an order for unbundled loops to be provided in Honolulu. The order also specified that in conjunction with the provision of unbundled loops, the customer's existing telephone numbers were to be ported using INP. The order was submitted via facsimile to GTE's NOMC in San Angelo, TX.

39. On September 3, 1998, GST contacted the Fort Wayne, IN NOMC to determine the status of the order. A Fort Wayne representative said they could not locate the order. GST requested that the individual initiate a trace with the San Angelo NOMC to locate the order only to be told, as indicated previously, that the Fort Wayne personnel are not allowed to contact the San Angelo NOMC directly.

40. GST was subsequently notified by e-mail that the order had been rejected on September 2, 1998 because, GTE alleged, the order had been filled out incorrectly. On September 14, 1998, twelve days after the order was rejected and eleven days after GST had been notified by e-mail that the order had been rejected, GST received an error report from GTE.

41. Upon further examination, GST determined that the errors, all seven of them, were directly attributable to input errors occurring at GTE's San Angelo NOMC. On September 18, 1998, attempting to overcome the setback, GST resubmitted the order to the San Angelo NOMC.

42. GST called Fort Wayne NOMC on September 22, 1998 to determine the status of the order. At first, the Fort Wayne representative could not find the order. Later the representative found the order and faxed a copy of a new error report indicating that two fields on the new order were "invalid."

43. Those fields had been left blank by GST because GTE had not provided GST with documentation indicating the proper information to be inserted into the subject fields. Further research by GST through GTE's "CLEC Help Desk" indicated that the fields were optional and that unbundled loop orders should not be rejected because they had been left blank by GST.

44. On September 24, 1998, GST resubmitted the order for the third time and specified a due date of October 1, 1998. On October 1, 1998, GTE successfully ported the customer's telephone numbers as ordered. Unfortunately, GTE failed to provide the unbundled loops as ordered. Immediate contact with GTE indicated that GTE's technicians in Honolulu were unfamiliar with the unbundled loop process. The customer, therefore, was retained on GTE's network with GST opening a trouble ticket with GTE's Mission Hills, CA Repair Center. On October 6, 1998, after no response from GTE, GST escalated the matter to a supervisor at the aforementioned repair center who walked a GTE technician in Honolulu through the unbundled loop process.
45. A process that should take no more than seven to ten business days, according to GTE's own published standards, took nearly a month. Meanwhile, the customer remained on GTE's network. More important, in the eyes of the customer, it appeared as if GST could not promptly meet its promises to provide service. The harm to GST, in a emerging competitive market where it is a new participant, needs no further explanation.

Unreasonable Delay in Allowing an NXX Migration

46. In May of this year, GST formally notified GTE that it was taking over provision of local exchange services at the March Air Reserve Base near Riverside, CA. As part of the takeover, GST needed GTE's cooperation in allowing the customer to migrate responsibility for its NXX from GTE to GST to avoid having to change every telephone number on the base.
47. It is common in the industry to use the NXX migration approach when a single customer uses an entire NXX for its local exchange services. Migrating the entire NXX to another provider, when that provider takes over responsibility for the provision of the customer's local exchange service, is a highly efficient and effective way to avoid having to port all 10,000 telephone numbers in the NXX on an interim or permanent basis. All that is required is the submission of formal correspondence to BellCore (then the administrator of the LERG) 120 days

before the transfer is to become effective. This allows all other carriers to update call routing information in their switches. GST has successfully migrated two other NXXs with other ILECs with no material problems.

48. In this instance, however, GTE took the position that an NXX migration was highly unusual and it was not required to cooperate with GST on the matter. For more than forty-five days, GTE refused to cooperate on the transfer. As the deadline for the quarterly LERG update approached, GST repeatedly contacted GTE to ascertain its position on the NXX migration and obtain the appropriate correspondence. Only at the last minute, literally thirty minutes before the deadline for quarterly LERG submissions, did GTE concede its position. It did so only after it forced GST to sign a letter stating the following:

1. The transfer of this code 909655, from GTE to GST is specific to this particular customer, March Air Force Base.
2. By agreeing to transfer the code for March Air Force Base to GST, GTE is not establishing a precedent for treatment of other GTE codes.

Simply stated, unlike other incumbent LECs addressing the same issue, GTE was not cooperative and used the time constraint of the impending customer transfer and LERG process to extract the aforementioned concession from GST before allowing the transfer to occur.

Conclusion

49. As GST's primary liaison with GTE, I have had numerous problems with the NOMCs, GTE's ordering processes, switch translations, etc. GTE, as evidenced herein, has demonstrated on many issues material disregard for its contractual and statutory obligations even after they are cited to GTE, and a cultural antipathy toward the advent of competition. Recent improvements in GTE's performance may very well be less related to a philosophical change and more with resolving situations to eliminate them as potential barriers to the completion of the merger. Without the merger, hanging like a Sword of Damocles over GTE's corporate objectives, it is my opinion that the completion of the merger will substantially reduce GTE's incentive to comply with its statutory, regulatory, and contractual obligations.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Brian D. Thomas
Brian D. Thomas

CERTIFICATE OF SERVICE

I, Teri Lee Amaya, hereby certify that on November 23, 1998, a true copy of **GST Telecom Inc.'s Comments In Opposition to the Transfer of Control** was served on the following people via United States Postal Service first-class mail, postage pre-paid:

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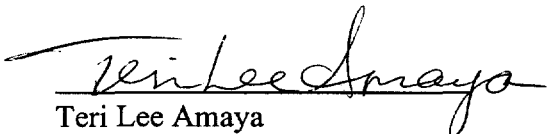
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